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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,)	Civil No. 3:15-cv-00643-GPC-WVG
)	
14 Plaintiff,)	PLAINTIFF’S MEMORANDUM
)	OF POINTS AND AUTHORITIES
15 v.)	IN SUPPORT OF ITS MOTION
)	FOR DEFAULT JUDGMENT
16 LAWRENCE PRESTON SIEGEL)	
17 (a/k/a Larry Lave, Yehuda Lave,)	Date: November 13, 2015
18 and Larry Easy))	Time: 1:30 PM
)	Courtroom: 2D
19 Defendant.)	Judge: Hon. Gonzalo P. Curiel
)	
)	NO ORAL ARGUMENT UNLESS
)	REQUESTED BY THE PARTIES

22 September 2, 2015

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Pursuant to Federal Rule of Civil Procedure 55(b)(2) and CivLR 55.1, plaintiff United States respectfully requests that the Court enter default judgment against defendant Lawrence Preston Siegel. As addressed in detail in its accompanying Statement of Facts (“SOF”), the United States alleges that Siegel, also known as Larry Lave, Yehuda Lave, and Larry Easy, prepares fraudulent federal tax returns and tax forms, including tax returns predicated on abusive tax arrangements he promotes and establishes for his customers.

Despite completion of alternative service of process following the Court’s June 5, 2014 Order (Doc. No. 5.) granting the United States leave to serve process pursuant to Rule 4(f)(3), Siegel has failed to plead, answer, or otherwise appear in this matter.¹ The Clerk, therefore, entered a default against Siegel on August 3, 2015. (Doc. No. 9.) The Court should now enter a judgment by default that permanently enjoins Siegel under 26 U.S.C. (“I.R.C.”) §§ 7402, 7407, and 7408 from, *inter alia*: (1) preparing tax returns for others; (2) operating, owning, or working in any business (including any solo practice) that provides tax advice; and (3) providing tax advice for compensation or any promise of compensation.

Argument

Rule 55(b)(2) of the Federal Rules of Civil Procedure allows the Court in its

¹ See Declaration of Russell J. Edelstein (Doc No. 7), confirming service of the Complaint, Amended Summons, Motion for Alternative Service of Process (including all filed supporting materials) by: (1) e-mail to Siegel; (2) e-mail and FedEx delivery to Siegel’s attorney, Samuel Brotman, who contacted undersigned counsel about this case on behalf of Siegel but refused to appear in this action or accept service of process; and (3) hand-delivery to Brotman’s law office in California by IRS Revenue Agent Roma Patel. The Government’s request for entry of default (Doc. No. 8, p. 4) was also served on Siegel and Brotman.

1 discretion to enter a judgment of default. Where a default has been entered
2 pursuant to Fed. R. Civ. P. 55(a), the defendant loses his standing before the court,
3 along with his right to present evidence on all issues, except as to the amount of
4 any monetary damages claimed by the plaintiff. *See Derek Andrew, Inc. v. Proof*
5 *Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008) (citing *TeleVideo Sys., Inc. v.*
6 *Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987)). Thus, on a motion for default
7 judgment, the district court accepts as true the well-pleaded factual allegations of
8 the complaint, except those relating to damages, which the United States does not
9 seek in this case. *See Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir.
10 2002); *Heidenthal*, 826 F.2d at 917-18; *see also DIRECTV, Inc. v. Oliver*, 2005
11 WL 1126786, *4 (N.D. Cal. May 12, 2005) (“[t]here must be a sufficient basis in
12 the pleadings for [default] judgment to be entered ... [t]he defendant is not held to
13 admit facts that are not well pleaded or to admit conclusions of law”) (quoting
14 *Nishimatsu Const. Co., Ltd. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir.
15 1975)).

16 Here, the well-pleaded allegations of the Complaint establish that Siegel
17 prepares fraudulent federal tax returns and promotes and implements abusive tax
18 arrangements for his customers. The Court should enter a default judgment of
19 permanent injunction because it is necessary to prevent recurrence of that conduct.

20 **I. The *Eitel* Factors Are Satisfied.**

21 In *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986), the U.S. Court
22 of Appeals for the Ninth Circuit set forth seven factors a court should consider in
23 determining whether to grant a motion for default judgment:

1 (1) the possibility of prejudice to the plaintiff, (2) the merits of
2 plaintiff's substantive claim, (3) the sufficiency of the complaint, (4)
3 the sum of money at stake in the action; (5) the possibility of a dispute
4 concerning material facts; (6) whether the default was due to
excusable neglect, and (7) the strong policy underlying the Federal
Rules of Civil Procedure favoring decisions on the merits.

5 **First**, the United States will suffer prejudice if default judgment is not
6 entered. Siegel has failed to appear or respond to the allegations in this action and,
7 thus, denial of judgment by default would leave the United States without a
8 remedy. *See, e.g., U.S. v. Torres*, 2013 WL 7137587, *3 (C.D. Cal. Apr. 17, 2013)
9 (noting that “[a] denial of default judgment that leaves a plaintiff without other
10 recourse has been found to be prejudicial” and issuing a default judgment
11 injunction against a tax preparer under I.R.C. § 7407) (citation omitted); *U.S. v.*
12 *Cathcart*, 2010 WL 1048829, *4 (N.D. Cal. Feb. 12, 2010) (noting that “[d]enying
13 a plaintiff a means of recourse is by itself sufficient to meet the burden posed by
14 this factor” and issuing an injunction against an abusive tax shelter promoter under
15 I.R.C. §§ 7402 and 7408) (citation omitted). Given the seriousness of the United
16 States’ claims, any further delay in enjoining Siegel’s conduct will prejudice the
17 United States by causing further harm to the Government, Siegel’s customers, and
18 the public fisc.

19 **Second** and **Third**, the sufficiency of the complaint and the merits of the
20 United States’ substantive claim also heavily weigh in favor of default judgment.
21 These factors require the Court to determine whether the allegations in the
22 complaint are sufficient to state a claim that supports the relief sought. *See*
23 *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978). Here, the allegations of

1 the Complaint are well-pleaded: they total 38 pages and 98 separately-numbered
2 paragraphs, and describe in great detail the enjoined conduct at issue. As set
3 forth below (*infra*, pp. 5-18), these allegations, which are deemed admitted,
4 demonstrate that Siegel has repeatedly violated the internal revenue laws, and an
5 injunction under I.R.C. §§ 7402, 7407, and 7408 is appropriate.

6 ***Fourth***, there is no money at stake in this action, and “[w]hen there is no
7 money at stake in an action and only permanent injunctive relief is sought, the
8 fourth *Eitel* factor weighs in favor of default judgment.” *U.S. v. Barnes*, 2015 WL
9 2386190, * 6 (C.D. Cal. Apr. 3, 2015) (granting default judgment to permanently
10 enjoin a tax return preparer) (citations omitted). Unlike a claim for monetary
11 damages, an action by the United States seeking injunctive relief involves “a more
12 important issue at stake: whether [defendant’s] interference with a legitimate
13 government function will be allowed to stand.” *U.S. v. Marty*, 2011 WL 4056091,
14 *6 (E.D. Cal. Sept. 12, 2011).

15 ***Fifth***, a dispute as to a material fact is unlikely in this case. The United
16 States’ factual allegations rely on documents created and distributed by Siegel to
17 his customers, and “[w]here a plaintiff has filed a well-pleaded complaint, the
18 possibility of dispute concerning material facts is remote.” *Barnes*, 2015 WL
19 2386190 at *6 (quotation omitted).

20 ***Sixth***, Siegel’s default is not due to excusable neglect. As shown in the
21 United States’ motion for alternative service, including attached e-mails from
22 counsel retained by Siegel in other matters, Siegel was well-aware of this case
23 since March 2015, but sought to avoid service of process or make an appearance.

1 (Doc. Nos., 3-1, 3-12); *see also Barnes*, 2015 WL 2386190 at *7 (the sixth factor
2 “favors default judgment when the defendant has been properly served or the
3 plaintiff demonstrates that the defendant is aware of the lawsuit.”) (quotation
4 omitted). In all, over five months have passed since the United States filed this
5 action, and Siegel has failed to plead, otherwise defend in all respects, or offer any
6 excuse explaining his nonappearance.

7 *Seventh*, while there is a strong policy favoring decisions on the merits, that
8 policy does not, on its own, require denial of the United States’ motion for default
9 judgment. “A defendant’s failure to answer a plaintiff’s complaint ‘makes a
10 decision on the merits impractical, if not impossible.’” *Barnes*, 2015 WL 2386190
11 at *7 (quotation omitted).

12 For all of the foregoing reasons, the *Eitel* factors weigh heavily in favor of
13 default judgment.

14 **II. A Permanent Injunction Should Issue Under I.R.C. § 7408.**

15 This Court has the authority to grant injunctive relief under I.R.C. § 7408
16 against individuals who engaged in conduct subject to penalty under I.R.C. §§
17 6700 or 6701, and injunctive relief is appropriate to prevent the recurrence of that
18 conduct. Siegel’s repeatedly violated both §§ 6700 and 6701, which warrants a
19 permanent injunction under § 7408.²

21 ² Because both I.R.C. §§ 7407 and 7408 expressly provide for an injunction, the traditional
22 guidelines for equitable relief do not have to be established for an injunction to issue. *U.S. v.*
23 *Gleason*, 432 F.3d 678, 682 (6th Cir. 2005); *U.S. v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th
Cir. 2000); *U.S. v. White*, 769 F.2d 511, 515 (8th Cir. 1985); *U.S. v. Buttorff*, 761 F.2d 1056,
(continued...)

1 A. *I.R.C. § 7408 Injunction for Violations of I.R.C. § 6700.*

2 Section 6700 penalizes any person who makes statements regarding the tax
3 benefits of any plan or arrangement organized or sold by him that he knows or has
4 reason to know are false or fraudulent as to any material matter. Five elements
5 must be shown to obtain an injunction under I.R.C. § 7408 for § 6700 violations:

6 (1) the defendant[] organized or sold, or participated in the organization
7 or sale of, an entity, plan, or arrangement; (2) [he] made or caused to be
8 made, false or fraudulent statements concerning the tax benefits to be
9 derived from the entity, plan, or arrangement; (3) [he] knew or had
10 reason to know that the statements were false or fraudulent; (4) the false
or fraudulent statements pertained to a material matter; and (5) an
injunction is necessary to prevent recurrence of this conduct.

11 *See U.S. v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000).

12 ***First***, Siegel organizes and sells an arrangement where he establishes “C”
13 corporations for his customers, typically in Nevada where customers have no
14 contacts, and uses these “C” corporations to illegally reduce or eliminate his
15 customers’ reported tax liabilities. (SOF, ¶¶ 5-11) This “out-of-state” “C”
16 corporation scheme is a “plan or arrangement” within the meaning of I.R.C. §
17 6700. *See U.S. v. Raymond*, 228 F.3d 804, 811 (7th Cir. 2000) (“under § 6700 any
‘plan or arrangement’ having some connection to taxes can be a ‘tax shelter’”).

18 Moreover, Siegel was intimately involved in the establishment, organization,
19 and operation of his customers’ “C” corporations. (SOF, ¶¶ 5-17.) He filed

20
21 (... continued)

22 1059 (5th Cir. 1985) (“When an injunction is explicitly authorized by statute, proper discretion
23 usually requires its issuance if the prerequisites for the remedy have been demonstrated and the
injunction would fulfill the legislative purpose.”).

1 documents establishing and maintaining the corporations, served as an officer of
2 them, in some instances maintained corporate records, guided customers about
3 what expenses to track to improperly claim as business expense deductions on tax
4 returns he prepared, and drafted sham employment contracts between the “C”
5 corporations and the customers in order to assist his customers to evade payment of
6 employment taxes. (*Id.*)

7 ***Second***, Siegel has made or caused to be made, false or fraudulent
8 statements concerning the tax benefits to be derived from participation. For
9 example, Siegel falsely advised customers that by implementing the “C”
10 corporation scheme, their entire home becomes an out-of-state business office
11 because the customer is “on call 24/7” while living or working from their out-of-
12 state “business office,” which purportedly transforms a vast array of personal
13 expenses into tax deductible business expenses, including meal costs, utility bills,
14 and payments for their home. (SOF, ¶¶ 5, 8-12.) No provision of the internal
15 revenue laws supports such an interpretation.

16 Section 280A of the I.R.C. generally prohibits any deduction for business
17 use of a taxpayer’s home. While I.R.C. § 280A(c) allows taxpayers to claim
18 certain legitimate home office deductions on their tax returns, taxpayers must
19 prove they meet one of the enumerated statutory exceptions to I.R.C. § 280A, such
20 as using a portion of their residence exclusively and on a regular basis as a place of
21 business. *See Dixon v. Comm’r*, 15 Fed. Appx. 469, 470 (9th Cir. 2001)
22 (unpublished) (citing *Pomorantz v. Comm’r*, 867 F.2d 495, 496 (9th Cir. 1988),
23 which notes the “heavy burden on the taxpayer to establish that home office

1 expenses are deductible”). The exceptions to Section 280A do not apply here. No
2 portion of I.R.C. § 280A legally supports Siegel’s false statements to customers
3 that their entire homes become out-of-state business offices merely: (1) by
4 establishing an out-of-state “C” corporation; and (2) because the customer is “on
5 call 24/7” while living or working from their purported out-of-state “business
6 office.” (SOF, ¶¶ 8-11.)

7 Nor is there any legal basis under I.R.C. § 119 for Siegel to advise customers
8 that creating an out-of-state “C” corporation transforms their entire home into a
9 business office and personal expenses incurred at the home, including meals, into
10 business expenses. Section 119 exempts employer-provided lodging and meals
11 from taxable compensation reported on employees’ individual tax returns, if the
12 lodging and meals are necessary for the performance of the employees’ job duties.
13 *See Boyd Gaming Corp. v. Comm’r*, 177 F.3d 1096, 1097, 1100 (9th Cir. 1999)
14 (citing *Comm’r v. Kowalski*, 434 U.S. 77 (1977)). For the employer, these
15 expenses may be deductible. *Id.* In order for Section 119 to apply, the taxpayer
16 must prove three elements:

- 17 • First, the lodging and meals must be “furnished for the
18 convenience of the employer”;
- 19 • Second, the lodging and meals are provided “on the business
20 premises of the employer”; and
- 21 • Third, the employee was “required to accept such lodging [or
22 meals] as a condition of his employment.”

22 *Cox v. Chaco*, 650 F.2d 174, 175-76 (9th Cir.1981) (holding that a taxpayer failed
23 to meet the third element of Section 119 when he failed to show that his employer

1 required him to accept free housing).

2 The circumstances under which I.R.C. § 119 applies are narrow. For
3 example, in *Boyd Gaming*, the Ninth Circuit concluded that free meals provided by
4 a casino to its employees on the business' premises qualified under Section 119
5 and, under the First Element described in *Chaco*, were furnished for the
6 convenience of the employer because of a "substantial non-compensatory business
7 reason" specific to the casino industry: valid logistical and security reasons for
8 having employees eat lunch on-premises. *Boyd Gaming*, 177 F.3d at 1100-01.
9 Similarly, in *Vanicek v. Comm'r*, the U.S. Tax Court held that lodging provided to
10 watchmen for a forest preserve qualified under Section 119 because, given the
11 specific requirements of the job, the forest preserve legitimately needed the
12 watchmen to live in strategically located lodgings in order to be on-call to respond
13 to emergencies. 85 T.C. 731, 737-42 (U.S. Tax Ct. 1985); *see also* Treas. Reg. §
14 1-119-1 (providing additional examples applying Section 119).

15 In this action, however, I.R.C. § 119 does not support Siegel's statements to
16 customers regarding the purported tax benefits of the out-of-state "C" corporation
17 scheme. For example, and as alleged in the Complaint, Siegel identifies no
18 authority in his written communications with customers (nor is the United States
19 aware of any) to support his false and fraudulent statements that:

- 20 a) Valid, substantial non-compensatory business reasons (to satisfy the
21 First Element of I.R.C. § 119) include "requiring the Corporation's
22 key employee(s) to live on the Corporation's business premises
23 [because it] makes good business sense," and "[w]ithout a question in

1 2013 when we are truly on call 24/7 working at home is a deduction
2 for the corporation” (SOF, ¶ 10);

- 3 b) Simply calling a customer’s home an out-of-state business office
4 transforms it, in its entirety, into a business premises under the
5 Second Element of Section 119 (SOF, ¶¶ 8-10); or
6 c) Customers are required to accept free meals and housing from their
7 “C” corporations (the Third Element of Section 119) because the
8 customers, who control the out-of-state “C” corporations Siegel
9 establishes for them, can impose upon themselves, as a condition of
10 employment, that they live in their home while working away from
11 their corporation's home state (*i.e.*, where the Siegel customer
12 typically has no actual contact) (SOF, ¶ 9).

13 Finally, Siegel also made false or fraudulent statements when he told
14 customers that they could enter into sham contracts with their “C” corporations,
15 again an entity entirely controlled by the customers and Siegel, in order to convey
16 customers’ professional skills and expertise to the corporations, and this would
17 transform income the customers received from their corporations into “royalties”
18 exempt from employment taxes. (SOF, ¶ 15.) These contracts lack any economic
19 substance, are sham transactions offered solely for tax purposes, and are ineligible
20 for any tax benefit. *See, e.g., Salem Fin., Inc. v. U.S.*, 786 F.3d 932, 951 (Fed. Cir.
21 2015) (quoting *Winn-Dixie Stores, Inc. v. Comm’r*, 254 F.3d 1313, 1316 (11th Cir.
22 2001), which holds that “it is clear that transactions whose sole function is to
23 produce tax deductions are substantive shams”); *UnionBanCal Corp. &*

1 *Subsidiaries v. U.S.*, 113 Fed. Cl. 117, 129 n. 29 (Fed. Cl. 2013) (discussing the
2 sham-transaction doctrine, which disregards for tax purposes transactions that
3 “lack economic reality in order to prevent taxpayers from subverting the legislative
4 purpose of the [Internal Revenue] Code”) (quotation omitted).

5 In sum, Siegel’s statements regarding his tax schemes are false and
6 fraudulent under I.R.C. § 6700.

7 **Third**, Siegel knew or had reason to know that his statements were false
8 and/or fraudulent. For the out-of-state “C” corporation scheme, Siegel notably left
9 supporting legal authority citations blank in his written memo to customers about
10 the scheme. (SOF, ¶ 10.) Moreover, Siegel took great steps to conceal the
11 deductions he falsely claimed on tax returns for his customers in connection with
12 the scheme. Specifically, he lumped bogus business deductions on “C”
13 corporation tax returns into single, large deductions categorized as supplies and
14 office expenses to conceal them from the IRS. (SOF, ¶ 13.) As for his advice to
15 mischaracterize income as royalties under sham “License Agreements,” Siegel
16 admitted that it is “not a problem *unless* the IRS finds it.” (SOF, ¶ 16.)

17 **Fourth**, the false or fraudulent statements pertained to a material matter.
18 Statements as to the “availability of tax deductions, credits, or to other mechanisms
19 for reducing tax liability . . . clearly qualify as ‘material’” under § 6700. *U. S. v.*
20 *Estate Pres. Servs.*, 38 F. Supp. 2d 846, 855 (E.D. Cal. 1998), *aff’d* 202 F.3d 1093
21 (9th Cir. 2000). Because the result of Siegel’s out-of-state “C” corporation scheme
22 is tax avoidance, the tax statements made by him in the promotion of the scheme
23 are material.

1 In sum, Siegel has engaged in conduct that violates § 6700, and the Court
2 should therefore enter a default judgment of permanent injunction under § 7408.
3 (*See infra* Section II(C), below, addressing the risk of recurrence factor).

4 B. *I.R.C. § 7408 Injunction for Violations of I.R.C. § 6701.*

5 Section 6701 penalizes any person: (1) who aids, assists, or advises with
6 respect to the preparation of a document that he; (2) knows or has reason to believe
7 will be used in connection with any material matter arising under the internal
8 revenue laws; and (3) who knows that the document, if so used, would result in an
9 understatement of another person's tax liability." This Court is authorized under
10 I.R.C. § 7408 to enjoin persons who have engaged in any conduct subject to
11 penalty under § 6701 where the Court also finds that injunctive relief is appropriate
12 to prevent recurrence of such conduct. *Estate Pres. Servs.*, 202 F.3d at 1098.

13 ***First***, by advising his customers to participate in the out-of-state "C"
14 corporation scheme and preparing resulting fraudulent tax returns for them, Siegel
15 aids his customers in the preparation of documents used to implement the scheme,
16 including, *inter alia*, documents to establish the "C" corporations and income tax
17 returns to claim fraudulent tax deductions. (SOF, ¶¶ 5-17.)

18 ***Second***, Siegel knows (or has reason to believe) that these documents will be
19 used in connection with a material matter arising under the internal revenue laws.
20 Indeed, the core purpose and effect of preparing these documents is to establish the
21 out-of-state "C" corporation scheme in order to illegally deduct personal expenses
22 as business expenses and evade the payment of employment taxes. Siegel is well
23 aware of these purported tax benefits and falsely touts them to customers as a legal

1 means to avoid paying federal taxes. (SOF, ¶¶ 8-10, 12, 14-17.)

2 **Third**, Siegel knows that his customers' income tax returns will result in an
3 understatement of tax liability, if submitted to the IRS. As addressed above, Siegel
4 attempted to: (1) conceal improper deductions from detection by the IRS by
5 lumping them together and claiming them as supplies and office expenses on tax
6 returns; and (2) admitted that mischaracterizing income as royalties under sham
7 "License Agreements" is "not a problem *unless* the IRS finds it."

8 The admitted facts establish that each of these elements to obtain an
9 injunction under § 7408 is met. (*See infra* Section II(C), below, addressing the risk
10 of recurrence factor). The Court should therefore enter a default judgment of
11 permanent injunction under § 7408, due to Siegel's violations of § 6701.

12 C. *Necessity of an Injunction to Prevent Recurring Violations.*

13 Finally, the Court should enter a default judgment of permanent injunction
14 under § 7408 because an injunction is necessary to prevent recurrence of Siegel's
15 conduct. Courts consider six factors when weighing the likelihood of recurrence
16 and therefore the necessity for an injunction under § 7408, including:

17 (1) the gravity of the harm caused by the offense; (2) the extent of the
18 defendant's participation; (3) the defendant's degree of scienter; (4)
19 the isolated or recurrent nature of the infraction; (5) the defendant's
20 recognition (or non-recognition) of his own culpability; and (6) the
likelihood that defendant's occupation would place him in a position
where future violations could be anticipated.

21 *Estate Pres. Servs.*, 202 F.3d at 1105. Here, consideration of these factors
22 establishes that an injunction is necessary to prevent recurrence of Siegel's
23 conduct.

1 **First**, the harm to the government and the public in this case is severe.
2 Siegel's conduct has harmed: (1) the Government's ability to assess and collect the
3 true tax liabilities of Siegel's customers; (2) Siegel's customers (who are liable for
4 taxes owed and potential penalties); and (3) the public at-large. (SOF, ¶ 27.)

5 **Second**, Siegel's participation in organizing and implementing his tax fraud
6 schemes is extensive. It spans from, *inter alia*, advising customers to enter into his
7 schemes, personally creating out-of-state "C" corporations for customers, drafting
8 documents and sham contracts to implement his schemes, advising customers
9 which personal expenses to track in order for Siegel to prepare (or direct others to
10 prepare) fraudulent tax returns, and defending against (and impeding) efforts by
11 the IRS to uncover Siegel's fraud. (SOF, ¶¶ 5-18.)

12 **Third**, Siegel knew or had reason to know his conduct was wrongful. As
13 addressed above, Siegel took substantial efforts to conceal his practice of claiming
14 bogus business deductions for customers, admitted that evading employment taxes
15 would be a problem if the IRS discovered the practice, and obstructed IRS efforts
16 to discover the facts behind Siegel's schemes.

17 **Fourth**, the violations in this case are part of a systematic and recurring
18 practice, dating back to at least 2008. (SOF, ¶ 1.)

19 **Fifth**, Siegel has never recognized his own culpability. Instead, he has
20 consistently impeded and obstructed IRS examinations and lied to the I.R.S., the
21 U.S. Tax Court, and his customers to cover-up his fraud. (SOF, ¶¶ 18, 20-26.)

22 **Sixth**, by failing to answer to the Complaint, the United States' allegations
23 that Siegel is likely to commit future tax violations are deemed admitted. *See U.S.*

1 *v. Broadster Kitchen, Inc.*, 2015 WL 4545360, *5 (C.D. Cal. May 27, 2015). In
2 addition, Siegel presents a serious risk of recidivism. His convictions for multiple
3 federal crimes in the 1990s, including tax evasion, has not dissuaded him from
4 making a career of promoting abusive tax plans and preparing fraudulent tax
5 returns since at least 2008. (SOF, ¶ 2.) A permanent injunction, backed by the
6 Court's contempt powers, will make clear to Siegel that his days of unlawful tax
7 activities are over.

8 In addition, Siegel's tax practice is largely operated remotely and/or
9 electronically, making future violations of the internal revenue laws harder to
10 detect. (SOF, ¶ 1.) If Siegel's customers and associates receive notice of a
11 permanent injunction, it will be far more difficult for Siegel to conceal his
12 wrongdoing from others or obtain the assistance of others to implement his tax
13 fraud schemes. *See* Fed. R. Civ. P. 65(d)(2) (noting that an injunction issued under
14 the Rule binds "other persons who are in active concert or participation" with an
15 enjoined party to the action, if those persons "receive actual notice of [the
16 injunction] by personal service or otherwise").

17 For all of the foregoing reasons, an injunction is necessary to prevent
18 recurrence of this conduct, and the Court should enter a default judgment of
19 permanent injunction under I.R.C. § 7408.

20 **III. Siegel Should Be Barred From Tax Preparation (I.R.C. § 7407).**

21 Under I.R.C. § 7407, the Court has the power to enjoin a federal tax preparer
22 from preparing tax returns if the United States establishes that: (1) the preparer
23 engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695, or

1 misrepresented his education and experience as a tax preparer, or engaged in any
2 other fraudulent or deceptive conduct which substantially interferes with the proper
3 administration of the Internal Revenue laws; (2) injunctive relief is appropriate to
4 prevent the recurrence of such conduct; and (3) the preparer continually or
5 repeatedly engaged in the proscribed conduct such that a more limited injunction
6 prohibiting the misconduct would not be sufficient to prevent such person's
7 interference with the proper administration of the internal revenue laws. *See*
8 I.R.C. § 7407; *U.S. v. McIntyre*, 715 F. Supp. 2d 1003, 1009 (C.D. Cal. 2010)
9 (citing *U.S. v. Kapp*, 564 F.3d 1103, 1109 (9th Cir.2009); *U.S. v. Nordbrock*, 828
10 F.2d 1401, 1403 (9th Cir.1987), and quoting I.R.C. § 7407(b)). As described
11 below, the Complaint sets forth sufficient allegations, which are deemed admitted,
12 to show that a permanent injunction preventing Siegel from preparing tax returns is
13 necessary.

14 ***First***, Siegel committed acts subject to penalty under I.R.C. §§ 6694 and
15 6695. Siegel violated I.R.C. § 6694 by, *inter alia*, preparing fraudulent returns
16 that: (1) claimed personal expenses as business deductions and entirely bogus
17 deductions (*e.g.*, for a non-existent employee benefit plan and a fictitious insurance
18 warranty); (2) understated customer income (*e.g.*, alimony payments); and (3)
19 evaded payment of employment taxes. (SOF, ¶¶ 12-13, 17, 19.) These acts
20 constitute penalty conduct under I.R.C. §§ 6694(a)(2) and 6694(b)(2)(A) as willful
21 attempts by Siegel to understate his customers' tax liabilities and are manifestly
22 unreasonable positions for a tax preparer to take. Siegel also engaged in penalty
23 conduct under I.R.C. § 6695(c) by using preparer identification numbers (PTINs)

1 belonging to other individuals on tax returns he prepared in order to evade
2 detection by the IRS. (SOF, ¶ 24.)

3 Moreover, Siegel repeatedly engaged in enjoined conduct described in
4 I.R.C. § 7407. Siegel misrepresented his education and experience as a tax
5 preparer by falsely claiming to customers, the Government, and the U.S. Tax Court
6 that he is a C.P.A. and a lawyer, thereby violating I.R.C. § 7407(b)(1)(B). (SOF,
7 ¶¶ 20-26.) Siegel also, *inter alia*: (1) attempted to interfere with IRS examinations;
8 (2) provided false corporate records and contracts to the IRS to support the
9 positions he took on tax returns; (3) filed customer tax returns without
10 authorization; (4) forged a customer signature on a U.S. Tax Court filing (5);
11 forged the signatures of licensed attorneys on correspondence to the IRS; (6)
12 impersonated licensed attorneys on telephone calls with the IRS; and (7) lied to
13 IRS officials during U.S. Tax Court litigation when asked to confirm customer
14 information. (SOF, ¶¶ 18-19, 24-25.) Under I.R.C. § 7407(b)(1)(D), these acts
15 constitute “fraudulent or deceptive conduct which substantially interferes with the
16 proper administration of the internal revenue laws.”

17 **Second** and **Third**, injunctive relief that completely bars Siegel from
18 preparing tax returns is appropriate to prevent the recurrence of this conduct.
19 Given the seriousness of the allegations, their repeated nature, and the wide variety
20 of Siegel’s illegal conduct under I.R.C. §§ 6694, 6695 and 7407, a narrower
21 injunction enjoining specific forms of misconduct that does not bar Siegel from
22 preparing tax returns would not be sufficient to prevent his continued interference
23 with the proper administration of the internal revenue laws.

1 **IV. A Permanent Injunction Is Warranted Under I.R.C. § 7402.**

2 This Court is authorized by I.R.C. § 7402 to issue an injunction “as may be
3 necessary or appropriate for the enforcement of the internal revenue laws.” The
4 remedies available to the United States under that statute “are in addition to and
5 not exclusive of any and all other penalties.” I.R.C. § 7402(a). Section 7402 “goes
6 beyond merely codifying a district court's general equity power to grant
7 injunctions” and “gives the district courts a full range of powerful tools to ensure
8 the enforcement of both the spirit and the letter of the internal revenue laws.” *U.S.*
9 *v. Moser*, 2005 U.S. Dist. LEXIS 28256, *15 (D. Haw. Oct. 17, 2005).

10 Injunctive relief under I.R.C. § 7402 “is appropriate if the defendant is
11 reasonably likely to violate the federal tax laws again.” *Broadster*, 2015 WL
12 4545360 at *5 (granting default judgment injunction under I.R.C. § 7402)
13 (citations omitted). “In predicting the likelihood of future violations, a court must
14 assess the totality of the circumstances surrounding the defendant and his
15 violations.” *Id.* (quoting *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980)).

16 As addressed above, from the allegations in the Complaint, deemed admitted
17 by Siegel given his failure to answer, the totality of the circumstances demonstrate
18 that Siegel has engaged in conduct that substantially interferes with the
19 administration and enforcement of the internal revenue laws, has done so since at
20 least 2008, and is highly likely to continue to engage in such conduct unless
21 enjoined. Therefore, injunctive relief against Siegel is appropriate under § 7402.

22 **V. Proposed Injunction Terms.**

23 The United States’ proposed injunction order, submitted with its motion for

1 default judgment, would permanently bar Siegel from preparing tax returns – a
2 remedy specifically provided for in the statutory language of I.R.C. § 7407. As
3 addressed above, Siegel’s conduct warrants this remedy.

4 Although not expressly provided for in its statutory language, I.R.C. § 7402
5 grants the Court the authority to bar Siegel from operating, owning, or working in
6 any business (including any solo practice) that provides tax advice and from
7 providing tax advice for compensation or any promise of compensation. *See, e.g.,*
8 *U.S. v. ITS Fin., LLC*, 592 Fed.Appx. 387, 394 (6th Cir. 2014) (affirming a § 7402
9 injunction entered after a bench trial against the CEO of a tax franchisor business,
10 permanently barring him “from operating any business related to tax return
11 preparation”)³; *U.S. v. Elsass*, 978 F. Supp. 2d 901, 942 (N.D. Ohio 2013), *aff’d*
12 759 F.3d 390 (6th Cir. 2014) (granting summary judgment in the Government’s
13 favor, enjoining a tax return preparer from preparing returns, and barring defendant
14 “from otherwise advising or assisting any person or entity regarding any tax related
15 matter”). District courts within this Circuit have also entered injunctions with
16 similar provisions at summary judgment and default judgment. *See, e.g., U.S. v*
17 *Kirk*, 2012 WL 1099772, *3 (W.D. Wash. Apr. 2, 2012) and *U.S. v. Jones*, 2011
18 WL 2680742, *9 (D. Idaho Jul. 7, 2011) (issuing injunctions on motions for
19 summary judgment barring defendants from “[g]iving tax advice or assistance to
20

21 ³ The Sixth Circuit’s opinion in *ITS Financial* also reviews “numerous cases” where district
22 courts have permanently barred tax preparers from assisting or advising anyone about the
23 preparation of federal tax returns. *See id.* at 396-97.

1 anyone for compensation”); *U.S. v. Kukhahn*, 2008 WL 3928028, *6 (W.D. Wash.
2 Aug. 21, 2008) (granting a default judgment injunction to enjoin defendant from
3 “giving advice to anyone about the federal tax laws or federal tax matters”).
4 Moreover, district courts in the Ninth Circuit have entered permanent consent
5 injunctions barring individuals from all involvement in businesses that provide tax
6 advice. *See, e.g., U.S. v. Jenkins*, 2013 WL 2387704, *1 (C.D. Cal. May 2, 2013);
7 *U.S. v. Trunzo*, 2013 WL 2443147, *2 (C. D. Cal. Apr. 25, 2013); *see also U.S. v.*
8 *Waage*, 3:11-cv-00403-WQH-DHB, Doc. No. 59, p. 3 (S.D. Cal. Aug. 27, 2012)
9 (barring defendant from “providing any individual or entity with any advice related
10 to federal taxes”). Based on the allegations in the Complaint and for the reasons
11 discussed above, the Court should enjoin Siegel under I.R.C. § 7402 from
12 operating, owning, or working in any business (including any solo practice) that
13 provides tax advice and from providing tax advice for compensation or any
14 promise of compensation.⁴

15 Pursuant to I.R.C. §§ 7402, 7407, and 7408, additional terms requested by
16 the Government would bar Siegel from specific misconduct identified in the
17 Complaint. They would also grant the United States leave to conduct post-
18 judgment discovery to ensure compliance with any permanent injunction entered
19 by the Court.

21 ⁴ This relief is narrower than requested in the Complaint, which seeks an order barring Siegel
22 from “[p]roviding any individual or entity with advice relating to federal taxes,” irrespective of
23 whether Siegel provides the tax advice for compensation or a promise of compensation.
(Complaint, p. 36, Prayer for Relief (E)(iv).)

Conclusion

For all of the foregoing reasons, the United States respectfully requests that the Court grant the United States' motion to permanently enjoin Siegel pursuant to §§ 7402, 7407, and 7408 (for violations of I.R.C. §§ 6700 and 6701) from, *inter alia*, (1) preparing tax returns for others; (2) operating, owning, or working in any business (including any solo practice) that provides tax advice; and (3) providing tax advice for compensation or any promise of compensation. A proposed order will be submitted with this Motion.

Respectfully submitted,

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Dated: September 2, 2015

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2015, I electronically filed the foregoing with the Clerk of the Court through the CM/ECF system, and that pursuant to Fed. R. Civ. P. 5(b)(2)(C) I will send the foregoing to defendant Lawrence Preston Siegel by regular mail at his last known addresses:

7437 South Eastern Avenue
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Las Vegas, NV 89123

6105 Pontiac Street
San Diego, CA 92115

I further certify that on September 2, 2015, I will send an electronic copy of the foregoing to Siegel's last known e-mail address of aaaamerican@gmail.com and to Samuel D. Brotman, 5134 Saratoga Avenue, Suite 5, San Diego, CA 92107, sbrotman@sambrotman.com, by regular mail and electronic mail.

s/ Russell J. Edelstein
RUSSELL J. EDELSTEIN
U.S. Department of Justice
Tax Division